IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 22603 of 2006(N)

PETITIONER:

SUBAIDA ALI, W/O. ALI,
MUKADA HOUSE, RAYONPURAM P.O.,
PERUMBAVOOR, ERNAKULAM DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.RENJITH B.MARAR
SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.K.R.SACHIDANANDAN
SRI.DILEEP P.PILLAI
SMT.LEKSHMI RENJITH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
HOME SECRETARY, STATE SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERINTENDENT OF POLICE,
KOTTAYAM.

3. DEPUTY SUPERINTENDENT OF POLICE,
OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,
KANJIRAPILLY, KOTTAYAM.

4. CIRCLE INSPECTOR OF POLICE,
PAMBADI, KOTTAYAM.

5. THE SUB INSPECTOR OF POLICE,
MANNARKADU POLICE STATION,
KOTTAYAM DISTRICT.

6. RAHIM,
POOKADASERRY, SPIRITUAL PALACE,
AYARKUNNAM P.O., KOTTAYAM.

R1 TO R5 BY D.G.P.SRI P.G.THAMPI &
GOVERNMENT PLEADER SRI k. SANTHOSHKUMAR.
SRI.ANIL THOMAS(T), SMT.K.V.RESHMI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17-10-2006, THE COURT ON 13-12-2006, DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

W.P.C.NO.22603 OF 2006

DATED THIS THE 13TH DAY OF DECEMBER 2006

JUDGMENT

The petitioner, who is the de facto complainant in Crime No. 56/2003 with respect to the offence under Section 376 of the Indian Penal Code, has sought for further investigation in Crime Nos.55, 56 and 57 of 2003 of Mannarkadu police station. According to the petitioner, the above crimes registered on the basis of the complaint of the petitioner as well as of two other ladies who and whose families were disciples of 6th respondent, Rahim, Pookadasserry, considered to be the spiritual head of a number of his disciples. The petitioner has produced the copies of the F.I.R.in the above crimes. Copy of the complaint preferred by the petitioner is produced as Ext.P4 (sic.Ext.P5 is the complaint of another petitioner in the connected matter). On account of the influence exerted by the 5th respondent (sic.6th respondent) the investigation was not proceeding properly, it is alleged. The petitioner filed complaint before the Director

General of Police vide Ext.P5. Thereafter the petitioner moved this Court vide W.P.C.No.17379/2003 and this Court directed the 3rd respondent, Dy.S.P. to supervise the investigation conducted by the 4th respondent, S.I.of Police. In the meantime, the petitioner's husband was beaten up by the 6th respondent and his henchmen at Kollam. But a false case has been registered against the petitioner's husband vide Crime No.16/03 (Ext.p7). The petitioner's husband was granted anticipatory bail. The petitioner and her husband and the other de facto complainants' families are facing threat from the 6th respondent. The petitioner has received notice that the police has filed a refer report in the present matter.

2. The Dy.S.P.Kanjirapilly, the investigating officer, has submitted a statement of the details of investigation wherein it is mentioned that the petitioner and Ayisha Beevi Mohammed and Ramla Siddique had filed complaints before the Mannarkadu police alleging offences against 6th respondent under Section 376 I.P.C. It is submitted that the petitioner and the other complainants and their family members were close disciples of 6th respondent, Rahim Pookkadassery,who is also known as

K.M.R.Guru. They happened to be on inimical terms with the 6th respondent after all of them including the Guru were involved in a murder case at Perumattom, Muvattupuzha on 26-1-1996. The Guru was the first accused in the murder case. It is the allegation that the husbands of the petitioner and others had to part with a great deal of money and their wives were subjected to repeated rape. It is alleged that the husbands of the victims attempted to kill 6th respondent and Crime No.16/2003 was registered by Oachira police for offences under Sections 452,323,324,354,308 read with Section 34 of the Indian Penal Code against their husbands. The writ petitioner and the other complainants have filed petitions before the Superintendent of Police, Kottayam only after registration of Crime No.16/2003 on the apprehension that their husbands will be taken into custody. The investigation of the crime of the Mannarkadu police station were conducted by the C.I.of Police, Pampadi and refer report was filed. Thereafter, the petitioner approached this court vide W.P.C.No.31593/2003 for further investigation and this court directed the Superintendent of Police, Kottayam to see that further investigation is conducted. The Dy.S.P.Kanjirapilly took

over the investigation as per order dated 8-1-2004. Altogether 122 witnesses were questioned. Final report has been filed on 3-2-2006.

3. The 6th respondent has filed a detailed counter statement. It is mentioned therein that the 6th respondent is the founder and promoter of the "Spiritual Movement" in India in the year 1987 on the basis of the theory that God has no religion and the people are the children of God. It is mentioned that the 6th respondent is known as 'Shaik'(atmiya guru) amongst the Muslim community. The Muslim fundamentalists did not accept the movement and acted as pseudo disciples in the year 1994. The petitioner's husband M.V.Ali was one of such persons. He later proclaimed himself as the Secretary of the Spiritual Movement and he and other Muslim fundamentalists indulged in various activities after joining the movement. As a consequence, the 6th respondent and the above persons happened to be the accused in S.C.No.174/1998 in the file of the Vth Additional Sessions Judge, Ernakulam with respect to the offence including the one under Section 302 I.P.C. Subsequently all of them were acquitted. It is after this that they have got

their wives to file the complaint and serious attempts were made to take away the life of the 6th respondent. The 6th respondent had filed a complaint against the above persons vide Crime No.16/2003 with respect to the offences including Section 308 I.P.C. They have been chargesheeted and the same is pending as S.C.No.1732/2004 in the court of Sessions, Kollam. It is after one month of the above incident that the present complaints have been lodged. The above is the result of after thought in order to mislead the court. It is further submitted that the petitioner had moved this Court vide W.P.C.No.17379/2003 and the court had directed the Dy.S.P.to supervise the investigation. Subsequently they moved W.P.C.31593/2003 seeking to handover the investigation to the Crime Branch. This Court directed the Dy.S.P.,Kanjirapilly to investigate the case once again. Although 6th respondent took up the matter in W.A. , the same was dismissed. The fact of filing W.P.C.No. 31593/2003 has been suppressed by the petitioner and hence she is not entitled to the relief sought for as she has approached the court with unclean hands. The Dy.S.P. Kanjirapilly has conducted an exhaustive investigation and has subsequently filed a refer

report. On getting notice of the refer report, the petitioner has not appeared before the court below and filed her objections. It is after seven months that she has moved this court with the present petition. When there is an alternative relief available, the petitioner is not entitled to approach this Court as held by the Supreme Court in various decisions.

4. The C.D. of all the three crimes were produced. Counsel were heard.

5. On a perusal of the C.D.,I find that the allegation is that during the period from 1993 onwards, the petitioners and other de facto complainants in Crime Nos.55,56 & 57/2003 were subjected to repeated rape by the 6th respondent. All the de facto complainants have filed the complaints before the police on 22-1-2003. All the de facto complainants are married ladies with children. Evidently the complaint has been filed after about 10 years of the first incident of rape. Further more as pointed out by the counsel for the 6th respondent, the petitioner has not mentioned the fact as to the filing of O.P.No.31593/2003 herein. The fact that Dy.S.P.Kanjirapilly had conducted further investigation into the matter is a very relevant fact and the

suppression of the same from the pleadings is a serious matter. In support of the above point, 6th respondent has relied on the decision reported in **S.B.Noronah(Smt) v. Union of India [(1994)1 SCC 372]** that the petitioner must come before the court with clean hands and honest conscience. It is stressed in the above decision that one of the established principles of invoking extraordinary jurisdiction is to approach the court with clean hands and honest conscience. One cannot abuse the process of the court and yet claim it's protection.

6. It can also be seen that exhaustion of alternative remedies is a condition for invoking the writ jurisdiction. The Supreme Court in **Gangadhan Janardan Mhatre v. State of Maharashtra & Others [(2004) 7 SCC 768]** has pointed out that it is open for the complainant to oppose the refer report on receipt of notice or can file a protest complaint. Issuance of notice on filing refer report is mandatory vide,**(Bhagwant Singh v. Commr.of Police [(1985) 2 SCC 537].** Admittedly the petitioner on receipt of notice has not appeared before the court below and opposed the refer report of the police. It is pointed out that it is after seven months of receipt of notice

regarding the refer report that the petitioner has approached this Court. It is pointed out in **Gangadhar Janardan Mhatre's case (op.cit)** that it has been indicated in several cases that the course available to be adopted in case final report is submitted and if the person has any grievance the same can be redressed in the manner provided in law and certainly by a writ petition. In view of the above position of law and as the petitioner has not resorted to alternative remedies available, the maintainability of the present petition will depend on the efficacy of the alternative remedies. It has pointed out by the counsel for the petitioner that the petitioner would be considerably handicapped to get the evidence adduced which would involve considerable expertise and require an expert outfit.

7. On a consideration of the C.D produced, I find that some of the witnesses have supported the version of the petitioner/the de facto complainant that 6th respondent was in the habit of having sessions exclusively for certain ladies behind closed doors and that he used to detest elderly ladies visiting him for solace. Most of the persons questioned have denied any

such inclinations on the part of 6th respondent. The circumstances of the case, i.e. filing compliant on the same day by the three de facto complainants and the filing of the complaint when their husbands were about to be apprehended in a sessions case involving in Section 308 IPC are in support of the case of 6th respondent that the complaints are just trumped up versions as acts of reprisal. The fact that the complaints have been lodged after about 10 years of the alleged first incident of the rape and the fact that the complainants have admitted that they were repeatedly subjugated by 6th respondent and the timing of the complaints are factors that militate against the genuineness of the allegations. It is seen that the Dy.S.P.has examined 122 witnesses and has come to the conclusion that the complaints are false.

In the circumstances and in view of the fact that the investigation by the Dy.S.P. as per the order of this Court has been suppressed, I find that the petitioner is not entitled to the relief sought for. In the result, the writ petition is dismissed.

Ks/- **K.R.UDAYABHANU, JUDGE**

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